Michael K. Jeanes, Clerk of Court
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SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2013-000232-001 DT 05/31/2013

THE HON. CRANE MCCLENNEN

CLERK OF THE COURT
J. Eaton
Deputy

STATE OF ARIZONA

v.

KYLE KENNETH WILLIAMS (001)

WEBSTER CRAIG JONES

JOHN P TATZ

FINANCIAL SERVICES-CCC
MESA MUNICIPAL COURT - COURT ADMINISTRATOR
MESA MUNICIPAL COURT - PRESIDING JUDGE
REMAND DESK-LCA-CCC

HIGHER COURT RULING / REMAND

Lower Court Case Number 2012–001568.

Defendant-Appellee Kyle Kenneth Williams (Defendant) was charged in Mesa Municipal Court of driving under the influence and driving under the extreme influence. Plaintiff-Appellant the State contends the trial court erred and abused its discretion in ruling the State had failed to establish a *corpus* for the admission of Defendant's statements to the police officers. For the following reasons, this Court reverses and vacates the ruling of the trial court.

I. FACTUAL BACKGROUND.

On December 28, 2011, the State charged Defendant with driving under the influence, A.R.S. § 28–1381(A)(1) & (A)(2); and driving under the extreme influence, A.R.S. § 28–1382(A)(1) (0.15 or more). The State asked for, and the trial court held, a pre-trial hearing to determine whether the State could establish a *corpus* for the admission of Defendant's statements to the police officers. (R.T. of Sep. 12, 2012, at 8.) The State contended the trial court should resolve the issue at a pre-trial hearing when hearsay would be admissible pursuant to Rule 104(a) of the Arizona Rules of Evidence. (*Id*. at 3, 5, 11.) Defendant's attorney contended *corpus* was a trial issue the trial court should resolve after the State had presented its evidence at trial. (*Id*. at 3–4, 11.)

The trial court read the police report number 2011–3620823, which contained the following information. At 10:28 p.m., Officer Palmer received a call to go to 9101 East Baseline Road to investigate a single vehicle collision of a silver Jeep Liberty that had collided with a pole. The dispatcher described the driver as looking very intoxicated, and described him as a white male, mid-forties, wearing a grey shirt and blue pants, 5' 10" tall, 160 pounds, and a goatee. The caller said the driver had gone into the Safeway store. Officer Palmer arrived at the scene at 10:29 p.m.

Officer Palmer went into the Safeway store and spoke to the manager, Tyrone Bell, who directed him to Defendant. Defendant was wearing a grey Dallas Cowboys shirt and grey and blue sports pants, and had a goatee. Defendant accompanied Officer Palmer to the silver Jeep Liberty, which was registered to Defendant. Defendant said he was attempting to back out of a parking space, but put the vehicle in drive rather than reverse, with the result it struck a block pillar. Officer Palmer saw that the vehicle had driven over a parking block, over the sidewalk, and into the block pillar. Defendant said he had two beers a few hours previously at the nearby bar. Officer Tanner then arrived.

At 10:26 p.m., Officer Tanner received a call to go to 9101 East Baseline Road to investigate a single vehicle collision in a parking lot. The caller reported seeing a male subject, mid-forties, wearing a grey shirt and blue pants, with a goatee, leave the vehicle and enter a Safeway store. Upon arrival, Officer Tanner contacted a male subject wearing a grey Dallas Cowboys shirt and blue pants, who had a goatee. Officer Tanner identified Defendant as this person. Defendant admitted driving a Jeep into a brick and concrete pillar just to the east of the Safeway store. Defendant said he was parked in a parking space and was attempting to back out of that space, but his foot got stuck under the floor mat with the result he drove forward rather than back. Defendant admitted to having two beers, but said his last drink was over 1 hour previously. Officer Tanner observed Defendant had bloodshot, watery eyes, slurred speech, and an odor of alcohol. Officer Tanner observed an SUV with major front-end damage that appeared to have jumped the concrete parking block, driven over the curb, and then hit the concrete pillar. The front seat was full of items that made it appear only one person would have been able to sit in the front seat. Officer Tanner gave Defendant the HGN test and saw six out of six cues. Defendant stumbled when he was walking.

Officer Palmer spoke to Mr. Bell again, who said a clerk named Keely Parrish said several customers told her a man had driven his vehicle into a block pillar, and identified the man to her. Ms. Parrish identified Defendant as that man. Mr. Bell did not see Defendant in the vehicle, but he heard Defendant talking on a cell phone, and it appeared he was calling for a tow truck.

Officer Palmer spoke to Ms. Parrish. She told him store customers reported a vehicle colliding with a block pillar and pointed out the driver to her. Ms. Parrish recognized the male subject had been a previous customer about 20 to 40 minutes before the reported collision. She thought that person may have been intoxicated at the time of the sale.

Officer Palmer went to the Uncle Bear sports bar, which was located a few hundred yards away from the Safeway store, and spoke to the bartender Miranda Coxen, giving her Defendant's name. She immediately recognized the name and remembered what he had been drinking. She retrieved Defendant's receipt, and it had a time of payment of 9:32 p.m. A subsequent test of Defendant's blood gave BAC readings of 0.1874 and 0.1880.

The trial court summarized the information it read in the police report. (R.T. of Sep. 12, 2012, at 8–10.) The trial court stated its understanding was a *corpus delicti* issue usually arose in the context of the trial and not as a pre-trial issue:

> THE COURT: From my understanding of this issue, that *corpus delicti* issues are usually not pre-trial evidentiary type hearing issues. They usually come up in the context of having a trial.

(R.T. of Sep. 12, 2012, at 25.)

> THE COURT: I don't think a *corpus* issue is a Rule 104 preliminary question, if that's what you're asking me.

(R.T. of Sep. 12, 2012, at 33.) The trial court was concerned about what it considered multiple levels of hearsay and questions about reliability. (*Id*. at 26–29, 37.) The trial court then ruled:

> THE COURT: I'm going to say that there is a *corpus* issue, and that the evidence doesn't suffice for enough to get his statement in that he was driving. If there is no one testifying that it's his truck, there is no one testifying that he was driving, or that there was nobody else in the vehicle with him, you have a vehicle on a pole and a guy calling for a tow truck who happens to be at [a] bar drinking before that. I just think you need more. So I have to make a ruling and that's the ruling I'm going to make. So you can present all that. You just can't get his statements in. And the jury will have to determine whether that's sufficient to find him guilty.

(R.T. of Sep. 12, 2012, at 44–45.)

The State then made a motion to dismiss so it could appeal the trial court's ruling, and the trial court granted that motion. (*Id*. at 45–46.) On September 20, 2012, the State filed a timely notice of appeal. This Court has jurisdiction pursuant to ARIZONA CONSTITUTION Art. 6, § 16, and A.R.S. § 12–124(A).

II. ISSUES.

A. *Did the trial court correctly determine corpus was a trial issue rather than a pre-trial issue.*

The State contends the trial court erred in determining *corpus* was a trial issue rather than a pre-trial issue. The Arizona Supreme Court has not specifically addressed the issues whether the question of *corpus* should be resolved at a pre-trial hearing, but its decisions make clear *corpus* is an issue to be resolved in the context of the trial based on the evidence the state presents in its case-in-chief:

> Furthermore, the State need not present evidence supporting the inference of *corpus delicti* before it submits the defendant's statements "[a]s long as the State ultimately submits adequate proof of the *corpus delicti* before it rests."

State v. Morris, 215 Ariz. 324, 160 P.3d 203, ¶ 34 (2007), *citing State v. Hall*, 204 Ariz. 442, 65 P.3d 90, ¶ 43 (2003), *quoting State v. Jones (Roche)*, 198 Ariz. 18, 6 P.3d 323, ¶ 14 (Ct. App. 2000).

> "As long as the State ultimately submits adequate proof of the *corpus delicti* before it rests, the defendant's statements may be admitted."

Hall at ¶ 43, *quoting Jones (Roche)* at ¶ 14.

> The failure of the defendant to object to the introduction of his statements when they are offered does not waive his right to question their admissibility for the purpose of proving corpus delicti. A defendant might not object at the time the statements are offered on the theory the state will prove corpus delicti before resting its case.

State v. Gillies, 135 Ariz. 500, 505–06, 662 P.2d 1007, 1012–13 (1983).

> When corpus delicti is later established, a variation in the order of proof does not constitute prejudice to the defendant.

State v. Gerlaugh, 134 Ariz. 164, 170, 654 P.2d 800, 806 (1982). The procedure as described by the Arizona Supreme Court is therefore as follows: The state presents its case-in-chief, including any statements the defendant had made. Once the State has rested its case, the defendant then would make a motion for judgment of acquittal contending the state had not presented sufficient evidence independent of the defendant's statements showing a crime had been committed and that someone had committed that crime. If the trial court concluded the state had failed to show a reasonable inference of *corpus delicti*, the trial court would grant an acquittal:

> If the state fails to make this showing [of a reasonable inference of *corpus delicti*], the trial court should grant a motion for directed verdict of acquittal.

State v. Gillies, 135 Ariz. at 506, 662 P.2d at 1013.

Some court of appeals cases have addressed the *corpus* issue when the trial court held a pre-trial hearing on the defendant's motion to dismiss. *See, e.g., State v. Nieves*, 207 Ariz. 438, 87 P.3d 851, ¶ 6 (Ct. App. 2004); *State v. Flores*, 202 Ariz. 221, 42 P.3d 1186, ¶ 3 (Ct. App. 2002). Other court of appeals cases have addressed the *corpus* issue when the trial court made its ruling after the defendant made a motion for judgment of acquittal at the close of the state's case. *See, e.g., State v. Sabin*, 213 Ariz. 586, 146 P.3d 577, ¶¶ 11, 33 (Ct. App. 2006), *depublished*, 217 Ariz. 320, 173 P.3d 1021 (2007); *State v. Morgan*, 204 Ariz. 166, 61 P.3d 460, ¶ 14 (Ct. App. 2002). And still other court of appeals cases have addressed the *corpus* issue when the trial court made its ruling both after a pre-trial hearing on the defendant's motion to dismiss and after the defendant made a motion for judgment of acquittal at the close of the state's case. *See, e.g., State*

v. Barragan-Sierra, 219 Ariz. 276, 196 P.3d 879, ¶ 13 (Ct. App. 2008). Thus, this Court has been unable to find any case that holds it is improper to hold a pre-trial hearing on the *corpus* issue. However, in light of the Arizona Supreme Court cases discussed above, it appears the proper procedure is to address the issue at trial after the state has presented its case-in-chief. The trial court thus correctly ruled *corpus* was a trial issue and not a pre-trial evidentiary hearing type issue.

B. *Did the trial court abuse its discretion in determining the State did not present sufficient other evidence to allow consideration of Defendant's statements.*

The State contends the trial court abused its discretion in determining the State did not present sufficient other evidence to allow consideration of Defendant's statements to the police officers. The *corpus delicti* doctrine ensures a defendant's conviction is not based upon an uncorroborated confession or incriminating statement. *State v. Chappell,* 225 Ariz. 229, 236 P.3d 1176, ¶ 9 (2010); *Morris*, 215 Ariz. 324, 160 P.3d 203, ¶ 34; *Hall,* 204 Ariz. 442, 65 P.3d 90, ¶ 43. The purpose of the rule is to prevent a person from being convicted based solely on a false confession that may have been the result of the person's mental instability or obtained through improper police procedures. *State v. Sarullo,* 219 Ariz. 431, 199 P.3d 686, ¶ 7 (Ct. App. 2008), *accord, Barragan-Sierra* at ¶ 12 (purpose of rule is to prevent conviction based solely on individual's uncorroborated confession, concern being that such confession could be false and conviction thereby lack fundamental fairness). In the present case, Defendant's statements to the police officers were essentially the following. Defendant said he was attempting to back out of a parking space, but put the vehicle in drive rather than reverse, with the result he drove forward rather than back and struck a block pillar. Both Officer Palmer and Officer Tanner saw that the vehicle had driven over a parking block, over the sidewalk, and into the block pillar. Looking only at that evidence the officers observed, and to paraphrase *Sarullo*, "From these facts, there is little risk [Defendant's conviction would be] based on a false confession." *Sarullo* ¶ 10. Thus, the evidence of the vehicle driven into the pillar was sufficient to corroborate Defendant's statements to the officers.

Defendant notes the State must show (1) a certain result has been produced, and (2) the result was caused by criminal agency rather than by accident or some other non-criminal action. *Chappell* at ¶ 9; *Morris* at ¶ 34; *Hall* at ¶ 43; *State v. Scott*, 177 Ariz. 131, 142–43, 865 P.2d 792, 803–04 (1993). Defendant contends the mere fact a vehicle has gone over a parking block, over the sidewalk, and into the block pillar is not sufficient to show criminal activity. However, only a ***reasonable inference*** of *corpus delicti* need exist before the trier-of-fact may consider an incriminating statement, and circumstantial evidence may support such an inference. *Chappell* at ¶ 9; *Morris* at ¶ 34; *Hall* at ¶ 43. This Court has not found a case that defines what a "reasonable inference" is. This Court notes there are three levels of ***proof*** in litigation: beyond a reasonable doubt; clear and convincing evidence; and preponderance of the evidence, which is slightly more that 50 percent. Those levels of proof do not apply, however, to the level of information that would give probable cause for a search or reasonable suspicion for in investigatory stop:

> More recently, we said that "the quanta . . . of proof" appropriate in ordinary judicial proceedings are inapplicable to the decision to issue a warrant. Finely-tuned standards such as proof beyond a reasonable doubt or by a preponderance of the evidence, useful in formal trials, have no place in the magistrate's decision. While an effort to fix some general, numerically precise degree of certainty corresponding to "probable cause" may not be helpful, it is clear that "only the probability, and not a prima facie showing, of criminal activity is the standard of probable cause."

Illinois v. Gates, 462 U.S. 213, 235 (1983) (citations omitted). Thus, while preponderance of the evidence is slightly more that 50 percent, the level necessary for either probable cause or reasonable suspicion is considerably lower than that level:

> Although an officer's reliance on a mere "hunch" is insufficient to justify [an investigatory] stop, the likelihood of criminal activity need not rise to the level required for probable cause, and it falls considerably short of satisfying a preponderance of the evidence standard.

United States v. Arvizu, 534 U.S. 266, 274 (2002) (citations omitted).

> The officer, of course, must be able to articulate something more than an "inchoate and unparticularized suspicion or 'hunch.'" The Fourth Amendment requires "some minimal level of objective justification" for making the stop. That level of suspicion is considerably less than proof of wrongdoing by a preponderance of the evidence.

United States v. Sololow, 490 U.S. 1, 7 (1989) (citations omitted); *accord, Illinois v. Wardlaw*, 528 U.S. 119, 123 (2000). Going over a parking block, over a sidewalk, and into a block pillar would raise a reasonable inference that the driver was driving at an unreasonable speed:

> A person shall control the speed of a vehicle as necessary to avoid colliding with any object . . . .

A.R.S. § 28–701(A). Thus, the observation of the vehicle having gone over a parking block, over the sidewalk, and into the pillar would be sufficient to raise a reasonable inference of a violation of § 28–701(A) and thus would allow consideration of Defendant's statements to the officers.

Defendant notes the cases talk in terms of "criminal agency" and notes A.R.S. § 28–701(A) is a civil traffic violation, not a criminal traffic violation. The cases talk, however, in terms of a result "caused by criminal agency rather than by accident or some other non-criminal action," thus differentiating between those actions for which a person is responsible to the state and those actions for which a person is not responsible to the state. Because a person is responsible to the state for the commission of a civil traffic violation, this Court interprets the *corpus delicti* requirement to be satisfied by a reasonable inference of a criminal offense, a criminal traffic violation, or a civil traffic violation. Because the fact the vehicle went over a parking block, over the sidewalk, and into the block pillar would raise a reasonable inference of a civil traffic violation, that would sufficiently allow consideration of Defendant's statements to the officers.

Separate and apart from the circumstantial evidence described above, the statements made by the other individuals lead to a reasonable inference that the collision of the Jeep with the block pillar was "caused by criminal agency." A person called the Mesa Police Department and reported a silver Jeep Liberty that had collided with a pole, described the driver as a white male, mid-forties, wearing a grey shirt and blue pants, 5' 10" tall, 160 pounds, and a goatee, and described the driver as looking very intoxicated. These statements would be sufficient to raise a reasonable inference that the driver committed a violation of A.R.S. § 28–1381(A)(1).

The trial court was concerned that the caller's statements were hearsay. For two reasons, this Court concludes the trial court's concerns should not have precluded consideration of the caller's statements.

First, it appears the caller's statement was not hearsay. "Hearsay" means a statement (oral assertion) (1) the declarant does not make while testifying at the current trial or hearing and (2) a party offers in evidence ***to prove the truth of the matter asserted in the statement.*** Rule 801(a) & (c), ARIZ. R. EVID. The State was not offering the caller's statement to prove the truth of the matter asserted (that Defendant had committed a violation of A.R.S. § 28–1381(A)(1)), it was offering the caller's statement to raise a reasonable inference that Defendant's statements to the officers were not the result of Defendant's mental instability or obtained through improper police procedures. *Sarullo* at ¶ 7. Because the caller's statement was not offered to prove the truth of the matter asserted, it was not hearsay under the definition given in Rule 801(c).

Second, even if the caller's statement was to be considered hearsay, it would be admissible under the hearsay exception for a present sense impression:

> A statement describing or explaining an event or condition, made while or immediately after the declarant perceived it.

Rule 803(1), ARIZ. R. EVID. This rule thus allows some lapse of time between the event and the statement. *State v. Tucker*, 205 Ariz. 157, 68 P.3d 110, ¶ 46 (2003) (court referred to cases that held statements were present sense impression when declarant walked approximately 100 feet before making statement and when declarant made statement 23 minutes after event).

In the present case, the record shows Defendant paid his bar tab at the Uncle Bear sports bar at 9:32 p.m., and the police dispatch was at 10:26 p.m., which is 54 minutes later. Within those 54 minutes, Defendant had to walk the few hundred yards from the bar to the Safeway, do his shopping, pay for the items, walk into the parking lot, get into his vehicle and drive into the pillar, be observed by the caller, who called the police, and have the dispatcher put out the call. Further, Officer Palmer arrived at 10:29 p.m., went into the Safeway, spoke to Mr. Bell, spoke to Defendant, went to the parking lot to view Defendant's vehicle, went back to the Safeway and again spoke to Mr. Bell, and then spoke to Ms. Parrish, who said Defendant purchased his items 20 to 40 minutes before that. Given these time frames, it appears the time from when Defendant drove into the pillar to when the caller reported that event to the police was soon enough that the caller's statement would qualify as a present sense impression.

Because the caller did not leave his or her name, the trial court was concerned about the reliability of that caller's statement. For probable cause for a search warrant or for an arrest, the courts must use a totality of the circumstances test, thus probable cause may be based on a tip from an anonymous informant as long as the information shows how the informant obtained the information, or subsequent police investigation corroborates the information received. *Illinois v. Gates*, 462 U.S. at 230–31, 238–46. In the present case, the anonymous informant obtained the information by observing Defendant drive over the curb and into the pillar. This would be sufficient to establish the informant's information was reliable. Further, once the officers arrived at the scene, the scene was exactly as the informant described, again establishing the informant's information was reliable. Because the information received from this anonymous informant would have been sufficiently reliable to establish probable cause, it was sufficiently reliable to provide a reasonable inference for the consideration of Defendant's statements to the officers.

The trial court was also concerned with multiple levels of hearsay: caller's statement to the dispatcher, and the dispatcher's statement to the officers. Rule 805, Arizona Rules of Evidence, provides, however, hearsay within hearsay is not excluded by the rule against hearsay if each part of the combined statements conforms with an exception to the rule. *State v. Smith,* 215 Ariz. 221, 159 P.3d 531, ¶ 28 (2007) (detective's report was admissible as recorded recollection, and statements of medical examiner contained in report were admissible as present sense impressions, thus report satisfied hearsay requirements). As discussed above, the caller's statement to the dispatcher would qualify as a present sense impression. The dispatcher's statement to the officers similarly would be a statement describing an event, and made while or immediately after the declarant perceived (heard) it. Thus, the dispatcher's statement to the officers would also qualify as a present sense impression. Because each part of the combined statements would conform with an exception to the hearsay rule, the combined statements would be admissible.

The above analysis would apply to the statements made by the Safeway customers. The customers perceived an event (Defendant's driving into the pillar) and immediately went into the store and describing the event to Ms. Parrish. The customers' statements thus would be present sense impressions. Ms. Parrish then described the event to Mr. Bell, again a present sense impression. Mr. Bell thus would be permitted to testify about what the customers had said about the Jeep's collision with the pillar.

The final matter is the trial court's concern that the State had no independent evidence that Defendant was driving the Jeep when it collided with the pillar:

> THE COURT: I'm going to say that there is a *corpus* issue, and that the evidence doesn't suffice for enough to get his statement in that he was driving. If there is no one testifying that it's his truck, there is no one testifying that he was driving, or that there was nobody else in the vehicle with him, you have a vehicle on a pole and a guy calling for a tow truck who happens to be at [a] bar drinking before that. I just think you need more. So I have to make a ruling and that's the ruling I'm going to make. So you can present all that. You just can't get his statements in.

(R.T. of Sep. 12, 2012, at 44–45.) The trial court appears to be confusing the evidence the State needs to prove beyond a reasonable doubt every element of the offense to obtain a conviction with the evidence the State needs to show a reasonable inference of criminal agency to permit consideration of Defendant's statements to the officers. As a matter of logic, if the State had evidence independent of Defendant's statements sufficient to prove every element of the offense beyond a reasonable doubt, Defendant's statements would be superfluous. Thus, the purpose of offering a defendant's statement in evidence is to fill in gaps in the State's evidence, as shown by the following cases.

In *Chappell,* 2-year-old Devon was found floating in the swimming pool at the apartment where he and his mother, Kristal, lived; Devon was later pronounced dead, and an autopsy revealed the cause of death was drowning. *Chappell* at ¶ 6. A few days later, Chappell admitted drowning Devon, but claimed he was acting at Kristal's direction. *Id*. Chappell subsequently contended his statement about the murder should have been excluded because the State failed to establish *corpus delicti. Id.* at ¶ 8. The court noted "the state must present sufficient evidence to permit a 'reasonable inference' that the 'alleged injury to the victim . . . was caused by criminal conduct rather than by suicide or accident.'" *Id*. at ¶ 8, *quoting Hall* at ¶ 43. The court then found the state had presented sufficient evidence to corroborate Chappell's statement:

> Here, the State presented significant evidence to corroborate Chappell's statements: Chappell was seen inspecting the swimming pool area at [Kristal's] apartment complex a few days before Devon's death; a river rock, similar to rocks found near Chappell's parents' house, was used to prop open the pool gate; [Kristal] routinely locked her apartment doors at night, making it unlikely that 2-year-old Devon could have opened the door himself; at one time, Chappell had a key to [Kristal's] apartment; and Devon's body was found in the pre-dawn hours in a pool located some distance from [Kristal's] apartment. This corroborating evidence makes it very unlikely Devon's death was an accident. Therefore, we find no error, fundamental or otherwise, in the trial court's admission of Chappell's statements.

Chappell at ¶ 10. No one saw Chappell drown Devon, just as in the present case no one (other than the Safeway customers) saw Defendant driving the Jeep. Nonetheless, the Arizona Supreme Court upheld the admission of Chappell's statement and affirmed his conviction and sentence of death. The only evidence that connected Chappell with Devon's drowning were (1) Chappell was seen in the pool area a few days before Devon's death; (2) a rock used to prop open the pool gate was similar to rocks found near Chappell's parents' house; and (3) at one time, Chappell had a key to Kristal's apartment. Similarly, in the present case, (1) Defendant was seen in the area where the Jeep hit the pillar; (2) the Jeep was registered to Defendant; and (3) Defendant was calling for a tow truck for the Jeep. Thus, the connection between Defendant and the collision was at least as strong, if not stronger, than the connection between Chappell and Devon's drowning. The evidence therefore was sufficient to allow admission of Defendant's statements that he was driving the Jeep.

In two other cases, there was even less evidence connecting the defendant to the crime that was the subject of the defendant's statement. In *Sarullo,* the defendant told police he had entered his ex-girlfriend's house on 8/24 and stolen her gun, and then entered her house on 8/25 and pointed the gun at her. The girlfriend testified about the 8/25 burglary and aggravated assault, but she had no idea that defendant had entered her home on 8/24, and the state had no evidence, other than defendant's statement, that he had entered her house on 8/24. Despite the total lack of any evidence of defendant's 8/24 entry into the house, the court held the evidence of defendant's commission of the 8/25 offenses corroborated defendant's confession to the 8/24 offenses. *Sarullo* at ¶ 10. *Sarullo* in turn relied on *Morgan,* a case in which the defendant told police he had engaged in oral sex with the 12-year-old victim, fondled her breasts, and digitally penetrated her. At trial, the victim remember defendant had touched her breasts and penetrated her, but she had no memory of defendant's engaging in oral sex with her, and the state had no evidence, other than defendant's statement, of oral sex. Despite the total lack on any evidence of oral sex, the court held evidence of defendant's commission of the other sex offenses corroborated defendant's confession to the oral sex:

> Although, absent Morgan's confession, the evidence did not show that Y. and Morgan had any oral sexual contact, the confession was sufficiently corroborated to eliminate any concern that it could be untrue and, thus, supported a "reasonable inference" that the offense had occurred. Accordingly, the trial court did not err in denying Morgan's Rule 20 motion.

Morgan at ¶ 23. In the present case, the circumstantial evidence that Defendant committed the offense in question was vastly greater than the evidence in either *Sarullo* or *Morgan.* Evidence of Defendant's statements to the officers was thus admissible in the State's case-in-chief.

III. CONCLUSION.

Based on the foregoing, this Court concludes the trial court erred in determining the State has not presented sufficient circumstantial evidence to allow consideration of Defendant's statements to the officers.

IT IS THEREFORE ORDERED reversing and vacating the ruling of the Mesa Municipal Court.

IT IS FURTHER ORDERED remanding this matter to the Mesa Municipal Court for all further appropriate proceedings.

IT IS FURTHER ORDERED signing this minute entry as a formal Order of the Court.

/s/ Crane McClennen
THE HON. CRANE MCCLENNEN
JUDGE OF THE SUPERIOR COURT

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